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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) FUJI 22.280 (100794-01012)
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<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>		
<p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 44071 Registration number _____.</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____.</p>		
<p>/Dexter T. Chang/ _____ Signature Dexter T. Chang _____ Typed or printed name (2120 940-6384 _____ Telephone number July 10, 2009 _____ Date</p>		
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>		

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Attorney Docket No.: 100794-01012 (FUJL 22.280)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Saied ABEDI
Confirmation No.: 2992
Serial No.: 10/565,709
Filed: January 24, 2006
Title: A WIRELESS COMMUNICATION METHOD...(as amended)
Examiner: Meless Nmn Zewdu
Group Art Unit: 2617

July 10, 2009

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

SIR:

In connection with the Pre-Appeal Brief Request for Review submitted herewith and in response to the final Office Action dated January 13, 2009, Applicant requests a panel review to determine whether the Examiner has failed to properly establish bases for § 103 rejections of pending claims 1-6, 8-11, 13-23, and 26-32 in the subject application. And, in support thereof, Applicant respectfully submits the following:

REMARKS

Claim 33 has been canceled. Claims 1-32 and 34-35 are pending in the application.

Applicant acknowledges with appreciation the Examiner's allowance of claims 34-35, and the finding that claims 7, 12, and 24-25 contain allowable subject matter. Applicant respectfully submits that claim 1, from which claims 7, 12, and 24-25 depend, is patentable over the references cited against it, as demonstrated below. Accordingly, Applicant respectfully requests that claims 7, 12, and 24-25 also be allowed.

The Examiner objected to claims 1-32 and 34-35 for apparent informalities. In particular, the Examiner apparently objected to the claim numbering of the preliminary amendment filed on January 24, 2006. Applicant respectfully submits that the January 24, 2006 preliminary amendment fully complied with 37 CFR § 1.121 and was entered as such

pursuant to 37 CFR § 1.115. Accordingly, Applicant respectfully requests that the claim objection be withdrawn. Please also see MPEP § 608.01(j) and 37 CFR § 1.126.

Claims 1-5, 8-11, 21-22, 26-28, and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Applicant's Admitted Prior Art ("AAPA") in view of U.S. Patent Application Publication No. 2003/0169746 to Kitazawa et al., and further in view of U.S. Patent No. 7,336,632 to Cheng et al.; claims 6, 13-15, 23, 29-30, and 32 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA, Kitazawa et al., Cheng et al., and further in view of U.S. Patent No. 7,373,420 to Lyon; claims 16-18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA, Kitazawa et al., Cheng et al., and further in view of U.S. Patent Application Publication No. 2004/0147276 to Gholmich et al.; and claims 19-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA, Kitazawa et al., Cheng et al., and further in view of U.S. Patent Application Publication No. 2002/0155853 to Lee et al. Applicant respectfully traverses the rejections.

The Examiner has failed to establish a *prima facie* case of obviousness in failing to provide any objective reason, beyond improper hindsight from the claimed invention itself, to combine the references in the manner proposed. Furthermore, the Examiner has misapplied the cited references in maintaining the rejections. For example, the Examiner argued that "AAPa also states that the base station is able to make appropriate scheduling since it is solely responsible for transmitting to the destination UEs (see paragraph 0003)," apparently implying that AAPA discloses a base station capable of performing all uplink scheduling. Page 12, lines 11-13 of the final Office Action. But the cited portion of AAPA continues as follows:

"However, it is also necessary for some mechanism to be provided for determining when and how each of the source UEs is to transmit its data in the uplink to the base station." Paragraph [0003] of U.S. Patent Application Publication No. 2007/0110000 for the present application.

Thus, AAPA, as cited and relied upon by the Examiner, clearly describes that a conventional base station by itself is insufficient for uplink scheduling. And AAPA merely describes the shortcomings of existing techniques for uplink transmissions, where only “time scheduling” and “rate scheduling.”

The Examiner acknowledged that AAPA failed to disclose the claimed “determining a measure of quality of service,” but maintained that such features were suggested by Kitazawa et al. Page 12, line 13 et seq. of the final Office Action.

Kitazawa et al. only describe, however, in paragraphs [0058]-[0059] thereof:

“[0058] ... The communication quality includes, but is not limited to, transmission power required for the base station to transmit the packet to the wireless terminal, receiving quality (such as SIR) at the wireless terminal, the receiving error rate at the wireless terminal, throughput and packet loss of the wireless terminal, etc. The service quality detection unit 102 outputs the measurement result to the transmission power determination unit 103 and to the quality range setting unit 104. The measurement result contains the identity information of the associated wireless terminal.

[0059] The transmission power determination unit 103 determines the transmission power level required to transmit the packet to the addressed wireless terminal, based on the packet supplied from the receiver 101 and the communication quality measured by the service quality detection unit 102...”
(Emphasis added)

Thus, Kitazawa et al., as cited and relied upon by the Examiner, would have, at most, suggested measuring downlink quality for use in transmission power determination for downlink transmissions. And absent improper hindsight from the claimed invention itself, there is no objective reason to incorporate such features described in Kitazawa et al., to alter any of the deficient “time scheduling” and “rate scheduling” uplink techniques described in AAPA. And even assuming, arguendo, that it would have been obvious to combine AAPA and Kitazawa et al., such a combination would still have, at most, suggested downlink quality measurements for downlink transmissions.

The Examiner cited Cheng et al. as a further combining reference that allegedly suggests the claimed features with respect to uplink transmission scheduling in dependence on a downlink quality measurement. Page 12, line 18 et seq. of the final Office Action.

But Cheng et al., as cited and relied upon by the Examiner, only describe a reverse link QoS control technique. The Examiner apparently relied upon the description in Cheng et al. of “inter-user and intra-user QoS” as alleged disclosure of the claimed scheduling features. Page 4, lines 2-5 of the final Office Action. The inter-user QoS and intra-user QoS described in Cheng et al. merely refer to QoS requirements amongst different users—inter-user QoS—and QoS requirements amongst applications or “instances” for a particular user—intra-user QoS—for a particular link—“on the forward link.” Col. 8, lines 52-60 of Cheng et al. As such, Cheng et al., as cited and relied upon by the Examiner—and correspondingly, the proposed combination of references—only describe respective QoS amongst users and amongst applications for a particular user on a particular link—i.e., transmissions on a link based on requirements on that particular link—and would have failed to disclose or suggest the claimed features of scheduling uplink transmissions from source user equipments to the base station in dependence on the measure of the downlink quality of service to a destination user equipment.

Thus, Cheng et al. and Kitazawa et al. both, at most, suggest link-by-link scheduling based on their respective QoS, and would have failed to suggest the claimed feature of scheduling uplink transmissions from the source user equipments to the base station in dependence on the measure of the downlink quality of service (to a destination user equipment).

In other words, even assuming, arguendo, that it would have been obvious to one skilled in the art at the time the claimed invention was made to combine AAAPA, Kitazawa et

al., and Cheng et al. at the time the claimed invention was made, such a combination would still have failed to disclose or suggest,

“[a] method of transmitting data packets in an uplink from a plurality of source user equipments to a base station, the data packets being for onward transmission to a plurality of destination user equipments, the method comprising:
determining a measure of a downlink quality of service from the base station to a destination user equipment; and scheduling uplink transmissions from the source user equipments to the base station in dependence on the measure of the downlink quality of service,” as recited in claim 1.
(Emphasis added)

Accordingly, Applicant respectfully submits that claim 1, together with claims 2-5, 8-11, 21-22, and 26-28 dependent therefrom, is patentable over AAPA, Kitazawa et al., and Cheng et al., separately and in combination, for at least the foregoing reasons. Claim 31 incorporates features that correspond to those of claim 1 cited above, and is, therefore, patentable over the cited references for at least the same reasons.

The Examiner cited Lyon, Gholmich et al., and Lee et al. as further combining references to specifically address the respective additional features recited in claims 6, 13-20, 23, 29, which depend from claim 1, and claims 30 and 32, which also incorporate features that correspond to those of claim 1 cited above. As such, further combinations with Lyon, Gholmich et al., and Lee et al. would still have failed to cure the above-described deficiencies of AAPA, Kitazawa et al., and Cheng et al., even assuming, arguendo, that such further combinations would have been obvious to one skilled in the art at the time the claimed invention was made. Accordingly, Applicant respectfully submits that claims 6, 13-20, 23, 29-30, and 32 are patentable over the cited references for at least the foregoing reasons.

Any fee due with this paper may be charged to Deposit Account No. 50-1290.

Respectfully submitted,

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